IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 70 of 2005

ORIENTAL INS. CO LTD.
V/S
ANAND SHARMA & ORS

Mr. LD KHATRI, for the appellant / petitioner

Date of Order : 18.1.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

It is contended by the learned counsel for the appellant that the cheque, given by the insured for payment of premium, was dishonoured on 27.2.98, intimation whereof was given to the insured on 3.3.98 by registered notice, and therefore, the appellant is not liable in view of the provisions of Section 64-VB of the Insurance Act.

I have considered the submission.

The learned trial Court has found that the appellant has failed to prove that any such intimation was ever given, and in any case, there is nothing to show that it was ever received by the insured. Learned trial Court has noticed that according to D.W.1, the intimation was sent by registered post, but then, apart from non-producing the acknowledgment receipt about the letter having been received by the addressee, even the receipt of the Post Office for booking of the communication letter has also not been produced on record. It is, in these circumstances, that the learned trial Court, relying upon the judgment of Hon'ble the Supreme Court in Oriental Insurance Company Vs. Indrajeet Kaur reported in 1998 ACJ 123, has found that the appellant is liable for payment of compensation to the third party.

Learned counsel then relied upon the judgment of Hon'ble the Surepeme Court in National Insurance Company Ltd. Vs. Seema Malhotra & Ors., reported in 2001 SCC (Cr.) 443 to contend that the Hon'ble Supreme Court has clearly held that in view of the provisions of Section 64-VB, the liability of the appellant is not attracted, where the cheque is returned dishonoured, as in that event, the contract of insurance is void.

In my view, the case in Seema Malhotra is a different case on facts, inasmuch as, that was a case, where the claim was lodged by the insured himself for his own damage. It is significant to note that in para-2, it was clearly observed by the Hon'ble Supreme Court as under:

> "There is no dispute that the insurer is liable as against third parties because it is covered by the statutory provisions contained in Chapter XI of the Motor Vehicles Act, 1988. But the insurer vehemently disputed the liability when the claim is made by the insured himself or his legal heirs, without any third party being involved. To avoid confusion we may point out that the Insurance Company has no dispute that the claims, if any, made by the kith and kin of the insured for the injuries sustained by them in the accident including the claims made by the legal representatives of the deceased in such accident would also be treated as third party claims."

Thus, it is clear that in Seema Malhotra's case, Hon'ble the Supreme Court had proceeded with the assumption that even in cases, where the cheque is returned dishonoured, so far as the third parties are concerned, the insurer would be liable to pay the compensation.

That being the position, I do not find any error on the part of the learned trial Court in passing the award against the appellant, relying upon Indrajeet Kaur's case.

However, I would like to clarify that it will be open to the appellant to recover back the amount from the insured in accordance with law, if the appellant is able to prove that the policy/cover-note was cancelled to the knowledge of the insured, and in that event, the judgment of the learned trial Court will not come in the way of the appellant.

The appeal is, therefore, dismissed summarily with the aforesaid liberty.

(N P GUPTA),J.

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